IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8756 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRELI DISTRICT PANCHAYAT - Petitioner(s)
Versus
RAKHUBHAI JIVANSINH - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner
MR PH PATHAK for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/07/2007

ORAL JUDGMENT

Shri H.S. Munshaw, learned counsel for the petitioner; Shri P.H. Pathak, learned counsel

for the respondent.

2. The petitioner-employer, being aggrieved by the award dated 19.5.2000 passed by the Labour Court, Amreli in Reference Case No. 47/98 is before this Court with a submission that the learned Court below was absolutely unjustified in holding that in view of the violation of Sections 25H, 25G and 25F of the Industrial Disputes Act, 1947, the respondent workman was entitled to reinstatement.

3. The short facts necessary for disposal of the present case are that the respondent-workman came to the Labour Court with a submission that he was appointed on 29 days' work with an artificial break right from 1982 to 29.6.87 and he was abruptly removed from service. He submitted before the Court that he had worked for more than 240 days in 12 calendar months preceding the date of illegal retrenchment and that the work, even if was of temporary nature, in view of the principles of “last come first go” and preferential treatment to the workman, the retrenchment was illegal. It was also the

case of the workman that after the illegal retrenchment of the workman, yet another person was employed at his place.

4. The employer appeared before the Court and contested the matter on all possible counts. Shri Munshaw, learned counsel for the petitioner-employer submitted that the work was of temporary nature, the workman had failed in proving that he had worked for 240 days. He also submitted that present is a case where no adverse inference could be drawn, because, every time appointment orders were issued and the case of the workman was never that sometimes there was oral appointment. He submits that if the workman failed in producing the complete records, then, no adverse inference could be drawn against the present petitioner.

5. He also submitted that temporary work came to an end though sub-division continued and there was no suggestion to the employer that after removal of the workman, yet another person was appointed at his place.

6. Shri P.H. Pathak, learned counsel for the

workman submitted that the findings of the Court below are that there was breach of provisions of Sections 25G and 25H of the Act. He however submitted that the Court has found it as a fact that the work continued and yet another person was appointed. He also submitted that the work continued even after the removal of the workman, therefore, non-availability of the work could not be projected as a ground. On being asked to read such finding, Shri Pathak read from part of para-13 of the award of the Labour Court. I should immediately record that what Shri Pathak read was not the finding recorded by the Court below but in fact, was a statement of the workman and the Court below was referring to the statement.

7. On being asked that on what basis, the Court has found violation of Section 25H, Shri Pathak submitted that the Court has so found and has found it as a fact. On being asked to read such finding, Shri Pathak was unable to read such finding but he however insisted that as the Court has found that there was violation of

Section 25H, it should be presumed that the workman continued and as the workman has given name of another employee, the Court below should hold that the work continued. He also submitted that non-production of the records would necessarily lead to an adverse inference against the employer.

8. The employer had come to the Court with a submission that after June, 1986 to January, 1987, the workman had not worked. According to them, for the period between January, 1987 to 29th June, 1987, the workman worked only for 153 days and in the 12 calendar months preceding the date of illegal retrenchment, the workman had worked for 157 days only. He submits that in case, the workman had not completed 240 days, then, violation of Section 25G or Section 25H would not help and assist the case and cause of the workman.

9. Placing reliance upon the judgment of the Supreme Court in the matter of *Range Forest Officer v. S.T. Hadimani [JT 2002 [2]SC 238],* it was submitted by Shri Munshaw that the basic

burden to prove that the workman had worked for 240 days would always be upon the workman. Shri Pathak, relying upon the judgment of the Supreme Court in the case of *R.M. Yellatti v. Asstt.Executive Engineer [(2006) 1 SCC 106]* submitted that the question of burden of proof would depend upon the facts of each case and if the workman had produced everything which was in his possession and despite the application, documents have not been produced by the employer or inspection is not given, as found in the case of R.M. Yellatti [supra], no adverse inference can be drawn against the workman.

10. From the facts, it would clearly appear that whenever an order of appointment was made, written order was issued, some of such orders have been produced by the workman but he has not stated before the Court below that for the period between June, 1986 to 31st December, 1986, instead of written orders, oral orders were issued. If such is not the case pleaded by the workman and other side comes and says that after June, 1986 first appointment order was issued on

3.1.87, then, there is no good reason to disbelieve the statement of the employer. True it is that if the workman produces whatever he possesses and requires the other side to produce the complete service records or details of appointment and such details are not produced by the employer, then, the Court can draw adverse inference against the employer. In the present case, the workman did not say before the Court below that he had worked any time during 1st July, 1986 and 31st December, 1986. In absence of such statement, oral submissions cannot be accepted nor it can be presumed that there were any work orders. The Court below was not justified in drawing adverse inference against the employer for not giving inspection of the complete service records.

11. So far as the violation of Section 25G or Section 25H is concerned, from the judgment of the Supreme Court in the case of *Jaipur Development Authority, v. Ram Sahai & anr. [JT 2006 [2] SC 520]*, it would clearly appear that such violation would not assume any importance

had the workman not worked for 240 days in 12 calendar months preceding the date of illegal retrenchment.

12. I must also observe that the Court below had not recorded any finding that after the removal of the workman, work continued or anybody else had worked at the place of the workman. The Court below has also not given any reasons to hold as to why there was violation of Sections 25T and 25H of the Act.

13. For the reasons aforesaid and legal position as clarified by the Apex Court, I must hold that the Court below was unjustified in making the award in favour of the workman. The award made by the learned Labour Court dated 19.5.2000 in Reference Case No. 47/98 is hereby set aside and quashed. The petition deserves to and is accordingly allowed. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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